

REMARKS

In the final Office action of January 26, 2005, claims 1-10, 12-14, 36-48, and 64, 67-70, and 73-74 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,726,708 ("Lasheras") in view of U.S. Patent No. 5,716,386 ("Ward"). Claims 18-21 and 23-32 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Lasheras patent in view of U.S. Patent No. 6,575,933 ("Wittenberg"). Claims 15-17, 49-51, and 71-72 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Lasheras and Ward patents in view of U.S. Patent No. 6,231,594 ("Dae et al."). Claims 33-35 were rejected under 35 U.S.C. 103(a) as being unpatentable over the Lasheras and Wittenberg patents in view of U.S. Patent No. 6,231,594 ("Dae et al."). Reconsideration of the present application is respectfully requested.

Applicant appreciates the courtesy extended in the personal interview on November 28, 2005. During the interview, Applicant noted that there was no proper motivation to combine the Lasheras patent with the Ward patent with respect to the limitation of "expanding the balloon catheter to a size and shape that distends the stomach" as set forth in, for example, claim 1. Applicant also noted that the Lasheras patent teaches away from invasively inserting a temperature sensor into the vasculature of the patient, as recited in, for example, claim 36 of the present application. Rather, the Lasheras patent states that "cooling of the internal organs and a considerable amount of blood can be accomplished without the invasive step of inserting a catheter directly into the vascular system" (emphasis added). The Lasheras patent also states that "[t]he core body temperature may be determined by a temperature monitor 128, which may be an esophageal monitor, a tympanic monitor, or any other type of temperature monitor as is known in the art with which core body temperature may be monitored." None of these exemplary temperature monitors are invasively inserted into the vascular system. The Examiner indicated that he would give these arguments due consideration.

ENTRY OF AMENDMENT AFTER FINAL

By the present amendment, claims 1, 18, 36, and 64 have been amended; and claims 10, 27, 28, 38, 39 and 73 have been canceled without prejudice. After entry of the present amendment, claims 1-9, 12-21, 23-26, 29-37, 40-51, 64, 67-72, and 74 will be pending and under consideration in the present application.

The application has been amended such that all of the claims now require having the balloon catheter expand to a size and shape that distends the stomach, and inserting a temperature probe into the vasculature of the patient. Applicant respectfully submits that this amendment does not raise any new issues that would require further consideration and/or a new search because all of the limitations were already present in the previously presented claims. Specifically, previously presented (now canceled) dependent claims 39 and 73 required the insertion of a temperature probe into the vasculature of the patient (as recited in the previously presented independent claims 36 and 64), as well as having “the expanded balloon distends the stomach” (claim 39) or “distending the stomach with the balloon catheter” (claim 73). Accordingly, Applicant respectfully requests entry of this amendment after final.

SECTION 103 REJECTIONS

All of the pending claims were rejected under Section 103(a) based on Lasheras in combination with other patent references. In particular, claims 1-10, 12-14, 36-48, and 64, 67-70, and 73-74 were rejected under 35 U.S.C. 103(a) as being unpatentable over Lasheras in view of Ward.

The claims, as amended, recite the step of “expanding the balloon catheter to a size and shape that distends the stomach” (*see, e.g.*, claim 1), or “that the balloon catheter expands to a size and shape that distends the stomach” (*see, e.g.*, claim 36). The Lasheras patent, on the other hand, discloses that “the return lumen 302 when inflated takes the approximate shape of the stomach” (*see col. 6, lines 44-46*), and makes no reference to distending the stomach.

With respect to the teachings of the Ward patent, Applicant respectfully submits that the stomach balloon in Ward is clearly intended to act as an anchor for an esophageal balloon catheter, and not for any purpose related to exchanging temperature with the stomach. Ward discloses at column 13, lines 25-28, “an optional stomach bladder 64 for anchoring member 62 in the esophagus” (emphasis added). Ward only teaches using a stomach bladder to anchor a heat transfer surface located within the esophagus. Ward does not teach inflating a stomach bladder to distend the stomach in order to improve heat exchange with the patient. Applicant’s specification, on the other hand, teaches at page 13, lines 2-4, that “[t]he act of slightly distending the stomach may trigger increased blood flow through the stomach lining and enhance the heat exchange.” Applicant respectfully submits that there is no proper motivation to combine the Lasheras patent with the Ward patent with respect to this limitation.

The claims, as amended, further recite the step of “inserting a temperature probe into the vasculature of the patient” (*see, e.g.*, claims 1 and 36), or “monitoring the patient with a temperature probe introduced into the vasculature of the patient” (*see, e.g.*, claim 64). The Lasheras patent, on the other hand, states that “[t]he core body temperature may be determined by a temperature monitor 128, which may be an esophageal monitor, a tympanic monitor, or any other type of temperature monitor as is known in the art with which core body temperature may be monitored.” Column 4, lines 16-20. These temperature monitors are all non-invasive. Moreover, the Lasheras patent further states that “cooling of the internal organs and a considerable amount of blood can be accomplished without the invasive step of inserting a catheter directly into the vascular system.” Column 4, lines 1-4 (emphasis added). Thus, the Lasheras patent teaches away from the claimed invention which requires the invasive step of inserting a temperature probe into the vasculature of the patient.

Accordingly, Applicant respectfully requests that, in view of the patentable distinctions discussed above, the rejection of the claims be withdrawn and all of the claims be allowed.

CONCLUSION

Applicant respectfully requests favorable reconsideration of the present application at an early date. Should the Examiner have any comments or questions regarding any of the foregoing, kindly telephone the undersigned.

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Respectfully submitted,

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